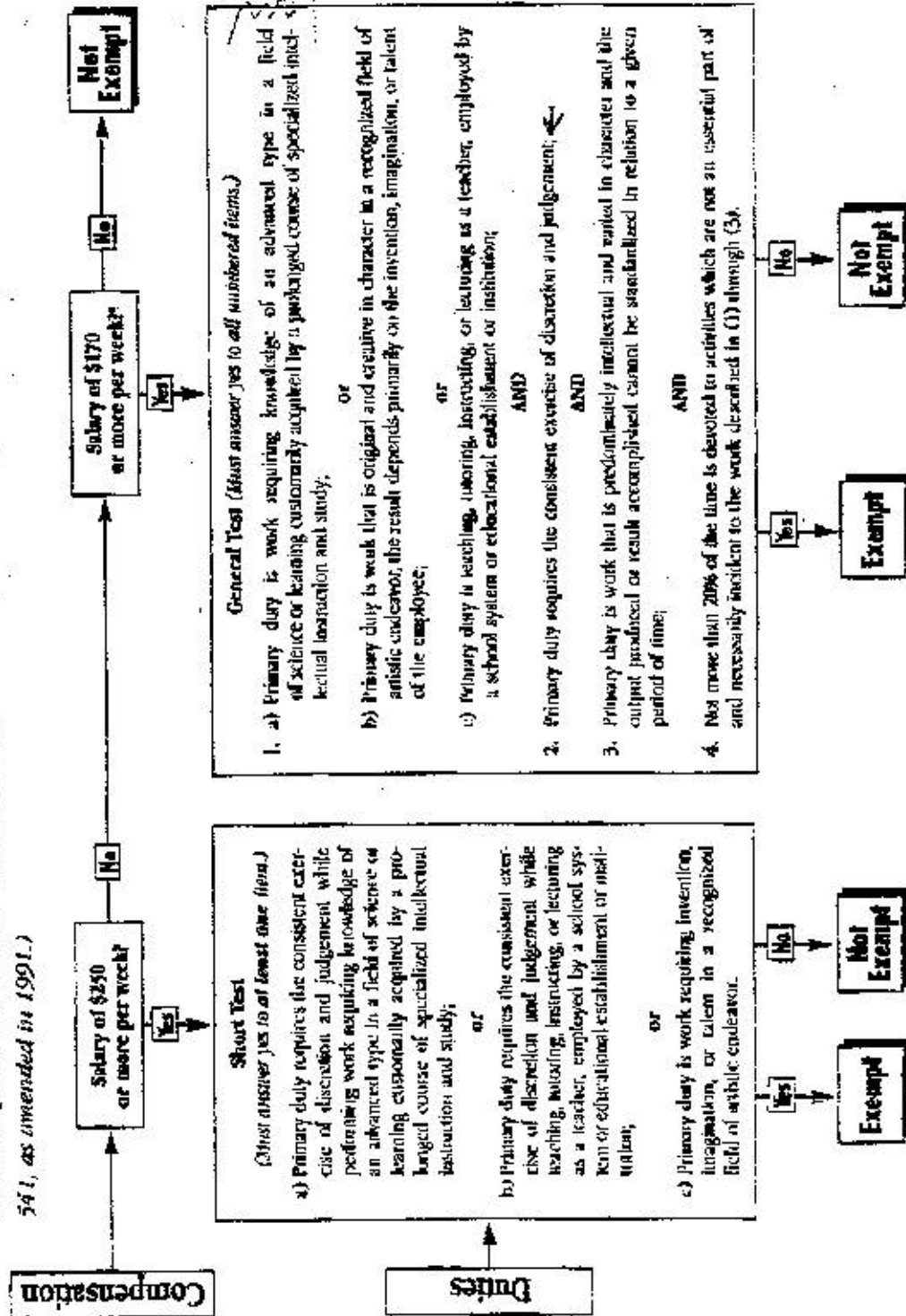


# Professional Employees

Use this chart to determine if a professional employee meets compensation and duties criteria for exemption from FLSA overtime requirements. (Summarized from 29 Code of Federal Regulations, Part 541, as amended in 1991.)

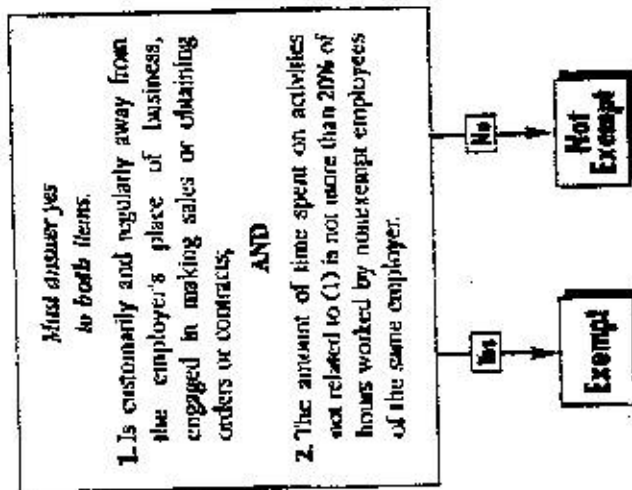


\*Minimum salary requirement does not apply to an employee, recruited to practice law or medicine, who is actually practicing in the field; OR who has an academic degree in medicine and is in an internship or resident program; OR who is employed as a teacher as defined in (c).

HAS SAFETY/WORK IN TOWN'S OTHER LOCATION -  
WHAT ABOUT RAW/GRAND MAT. SUN. 2. OVER APC HANDS - 4PB

## **Employees in Outside Sales**

Use this chart to determine if an outside sales employee meets criteria for exemption from FLSA overtime requirements. (Summarized from 29 Code of Federal Regulations, Part 541, as amended in 1991.)



## Employees in Computer Systems Analysis and Programming Work

Use this chart to determine if computer systems analysis, computer programmers, software engineers, and other similarly skilled employees meet criteria for exemption from FLSA overtime requirements. (Summarized from 29 Code of Federal Regulations, Part 541, as amended in 1992.)

(At least answer yes to both items below.)	
1. Regular rate of pay exceeds 6 2/3 times the minimum wage and is paid on an hourly basis;	or
Regular rate of pay is \$155 or more per week and is paid on a salaried basis.	AND
2. Primary duties consist of one or more of the following:	
a) Application of systems analysis techniques and procedures, including consulting with users, to determine hardware and software functional specifications;	or
b) Design of computer systems based on and related to user specifications;	or
c) Creation or modification of computer programs based on and related to system design specifications;	or
d) Creation or modification of computer programs related to machine operating systems;	or
e) A combination of the above duties, provided that the same level of skills is required.	

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# **Descriptions Now!® Program and User Manual**

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# PAYROLL LEGAL

ALEXANDER HAMILTON INSTITUTE INCORPORATED

# Alert

## TAXES AND COMPLIANCE

### High Court Takes 'Payroll' Route for Title VII

You've always known "payroll" as an activity — whether you modern numbers to a service bureau or actually withhold taxes, cut paychecks, and file tax returns. But according to a U.S. Supreme Court decision, payroll is now a measurement as well — how you count employees to comply with Title VII of the Civil Rights Act of 1964. **Impact:** Your record-keeping burden may increase as Personnel taps Payroll for more detailed head counts. [Walters v. Metropolitan Educational Enterprises, Inc., U.S. S.Ct., No. 95-259 (1997).]

**Numbers game.** An employee sued for retaliatory discharge after she was fired for filing a sex discrimination charge against her employer. **Employer's defense:** The company didn't come under Title VII because it didn't meet the law's threshold: whether an employer has at least 15 employees on each working day in 20 or more weeks in the current or preceding year.

➤ **COUNTING METHODS:** This employer used a Title VII counting method called the day-to-day method. This method counts all exempt employees, whether or not they're at work on any day. But it counts non-exempts only if they're actually at work or on paid leave. A competing counting method, the payroll method, counts all active employees on the payroll, regardless of their status or whether they're working on any given day.

**Payroll method: easiest and fairest.** Using the day-to-day method, a federal appeals court upheld the dismissal of the employee's case. The High Court reversed, ruling that the payroll method comes closest to Title VII's intent that all workers with an ongoing employment relationship be counted, even if they don't work on some days. **Court:** Under the payroll method, all one needs to know to count an employee for the 20-week test is whether he/she started or ended employment during that year and, if so, when.

➤ **BEYOND TITLE VII:** This case covers Title VII. But other laws, including the Family and Medical Leave Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, have similar counting requirements. And it's unlikely that the High Court would sanction a different counting method. **Result:** Only the smallest employers are now exempt from Title VII, and would be exempt from these other laws. ♦

### Damage Control — IRS Rules Discrimination Awards Are Taxable

It's not bad enough that a discrimination claim against your company could make it liable for back pay and damages for emotional distress. Now you have to worry about handling it correctly from a tax standpoint, so you don't land in hot water with the IRS. And it hasn't always been easy knowing how the IRS would rule. **Confusion reigns:** While it had

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ed in 1993 that these awards weren't taxable, it changed its mind nearly two years ago, and put the issue on hold. Further complicating the tax picture is last year's Small Business Job Protection Act (SBJPA), which changed the definition of tax-free damages. *Final words:* The IRS has settled the issue by ruling that both back pay and damages are taxable. [Rev. Rul. 96-65, IRB 1996-53.]

**Taxable, yes, but subject to withholding?** According to the ruling, back pay issued to satisfy an employee's claim that he/she was denied a promotion due to disparate treatment employment discrimination under Title VII is both taxable and subject to income tax withholding, FICA, and FUTA.

But whether damages for emotional distress arising from the same Title VII claim are subject to FICA and FUTA is a stickier issue. Under the SBJPA, damages are excludable from gross income only in cases of physical injury or sickness. And emotional distress alone isn't considered an injury. *Taxing result:* Damages for emotional distress alone (i.e., without damages for medical care resulting from the distress), are includable in an employee's gross income, but aren't subject to income tax withholding, FICA, and FUTA. *W-2 result:* These damages are shown only in Box 1 of the employee's W-2.

**Allocate properly.** The IRS told PAYLA that damages for emotional distress aren't subject to income tax withholding, FICA, and FUTA, *provided* the entire damage award or settlement is properly allocated between back pay and damages. The IRS, of course, reserves the right to reallocate awards which it deems unreasonable. *Beware:* Absolutely no authority defines "reasonable" in this context.

➤ **WHAT'S A PAYROLL PERSON TO DO?** First make the top brass in your company aware of this new IRS position, since it may influence how they handle these Title VII claims. And while you probably won't be involved in the litigation or settlement discussions, you *must* be involved in the allocation decision, since these awards have a definite impact on payroll. ♦

## **W-2s: In the News Again**

It's never too early in the year for the IRS and the Social Security Administration (SSA) to issue W-2 news. With that in mind, here are the latest pronouncements you need to know from both agencies.

**1. Automatic extensions for final W-2s.** Last year, the IRS issued regulations for filing final W-2s if you go out of business. Under these regs, beginning this year, you must give employees their final W-2s when you file your final 941 form (forms are filed quarterly on April 30, July 31, October 31, and January 31). Final W-2s and a W-3 form must then be filed with the SSA one month after your final 941 is filed.

In requiring you to file final W-2s on this expedited basis, the IRS recognized that magnetic media filers would have a computer programming problem if forms were due before the year's mag media specifications were released. *Solution:* The regs provide for an automatic extension of time, so computers can be adjusted to the year's specs. The extension also applies to the time you have for giving employees their final W-2s.

The IRS has ruled that for mag media filers, the deadline for providing employees with forms under the automatic extension is October 31 of the year final forms are due. The SSA filing deadline is November 30. [Rev. Proc. 96-57, IRB 1996-53.]

➤ **FOURTH-QUARTER FINALS:** If you must provide expedited W-2s during the fourth calendar quarter of a year, follow the regular W-2 rules: Provide employees with their copies by January 31 of the next year and file with the SSA by the last business day of February.

**2. W-2s, W-4s, and 941s when a business is sold.** If you buy a business, you can save substantial FICA and FUTA dollars by using a special procedure which allows you, as the successor, to credit the

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